IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMARY SUIT NO.4510 OF 2000

Mr. Ajay Bhimsen Gupta & Ors. ... Plaintiffs.

V/s.

Kokila H. Gosalia. ... Defendant.

....

Mr. Rajesh C. Shah for the Plaintiffs.
None for the Defendant.

CORAM : DR. D.Y.CHANDRACHUD,J.

03rd April 2007.

P.C. :

. The Suit under Order 37 of the Code of Civil Procedure, 1908 is based on a promissory note executed by the Defendant in the amount of Rs.1 lakh for valuable consideration. Though styled as a Bill of Exchange payable on demand, the drawer and the drawee are one and the same, namely the Defendant.

2. In the circumstances, under Section 17 of the Negotiable Instruments Act, 1881, the holder is entitled on his election to treat it as either as a promissory note or a bill of exchange. The promissory note was furnished in lieu of a sum of Rs.1 lakh advanced by the Plaintiff to the

Defendant by a cheque on 11th June 1997. On 12th June 1997 and 17th October 1997, the Defendant issued cheques in the amount of Rs.6,000/- each towards advance payment of interest. In the circumstances, the suit which has been instituted on 13th September 2000 is within the period of limitation.

3. The Defendant has not entered appearance despite being served. An affidavit of service has been filed. The Plaintiff has tendered a compilation of documents, containing the original of the promissory note dated 12th June 1997 on which the suit is founded. The claim of the Plaintiff falls within the purview of Order 37 of the provisions of the Code of Civil Procedure, 1908. The Defendant not having entered appearance despite service of the writ of summons, the Plaintiffs would be entitled to a decree as prayed subject to the modification that the Plaintiffs would be entitled to interest at the rate of 9% per annum from the date of the institution of the suit until payment or realization. Refund of Court fees if any, as per rules. Ordered accordingly.